

Responses to Comments on Amendments to State Water Board's Conflict of Interest Code

The State Water Board received 14 comments on the proposed amendments to its Conflict of Interest Code. The comments fell roughly into six categories:

1. Comments suggesting corrections to the document – four comments were focused on correcting issues such as adding positions that were left off, being consistent in using singular v. plural, taking out term “chief” – all changes were made.
2. Concerns about having to disclose property interests – three letters expressed concerns about having to disclose property interests, specifically concerns were raised about how this affects staff's privacy interests. Comments were responded to individually, explaining that employees are not required to list their primary residence on the Form 700, but it is still considered an economic interest for conflict of interest purposes. For property interests that have to be listed, such as rental properties within the jurisdiction of the employee for which rental income is received, it is sufficient to use an assessor's parcel number instead of a street address.
3. Questions as to why State Water Board is adding positions to the code – two commenters questioned why the State Water Board is updating its conflict of interest code to include the professional staff, including engineers and scientists. Commenters were responded to (see attached letter to unions), describing the recent decision by the Fair Political Practices Commission (FPPC) that brought to our attention that our current conflict-of-interest code does not include all the positions where staff participate in making decisions.
4. Comments that not all professional staff should be designated in the code – three commenters stated that they did not think that their position should be designated because their work is purely technical or ministerial, or they do not make decisions that have a material effect on a financial interest, and that only seniors or managers do. Employees that participate in making governmental decisions must be designated, unless there is “significant intervening substantive review” of their work. “Significant intervening substantive review” has been interpreted by the FPPC to require more than the mere review by superiors of the recommendations, but rather the independent checking of the results without solely relying on the data or analysis provided by the staff person. Staff is, therefore, considered to participate in a decision, even if it is reviewed by superiors, if: (1) those superiors rely on the data or analysis prepared by the staff person without checking it independently; (2) those superiors rely on the professional judgment of the staff person; or (3) if the staff person in some other way actually may influence the final decision.

5. Questions as to specific situations – three commenters had questions about what economic interests would have to be disclosed in their specific situations. There will be follow-up, including online training and resources, for those who have questions as to what interests should be disclosed.
6. Comment regarding vagueness of disclosure categories – the unions for the Professional Engineers in California Government (PECG) and the California Association of Professional Scientists (CAPS) submitted comments, raising questions about what is required under the disclosure categories 2, 6, and 9. These categories require disclosure of economic interests of the type to contract with or be regulated by the state or regional boards, or to provide research, planning, or environmental impact reporting services related to water supply or water quality. No changes are being proposed to these disclosure categories. None of the language in disclosure categories 2, 6, and 9 is new; it is the language used in the current Water Boards' Conflict of Interest Code, and it comes from template language provided by the FPPC. As explained in the letter to the unions, which is attached, it is not necessary for employees to be aware of every entity that provides services to, or is regulated by, the state and regional boards, or to know which entities provide research, planning, and environmental impact reporting services. Rather, once employees identify their own economic interests, they only need to determine whether their economic interests are "of the type" to provide services to or be regulated by the State Water board or provide research, planning and environmental impact reporting services. If an employee is uncertain whether a particular economic interest fits within the applicable disclosure category, there are resources at the Water Boards that provide guidance to make that determination.